

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4328 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

G S R T C

Versus

JAYANTILAL G RAVAL

Appearance:

MR HARDIK C RAWAL for Petitioner

NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 08/10/1999

ORAL JUDGEMENT

Learned advocate Shri Raval is present for the
petitioner Corporation. No one is present for the
respondent though notice of rule has been served upon the
respondent workman.

The facts of the present case are that the
respondent workman was working as a driver since many
years. On 5.12.81, when the respondent was on duty as a

driver on route Ahmedabad to Palla, meanwhile, near Vijol Stand, his bus dashed with one cyclist and the accident thus took place. On the basis of the said accident, chargesheet dated 14.12.1981 was served to the respondent and after considering his reply, departmental inquiry was initiated against the respondent which has, ultimately, resulted into dismissal of the respondent workman on 5.10.1982. The respondent workman had challenged the said order of dismissal before the labour court Ahmedabad by filing Reference No. LCA 1340 of 1984. Before the labour court, statement of claim was filed by the respondent workman and the petitioner corporation has filed the written statement vide Exh. 6. The petitioner has produced documentary evidence vide Exh. 7 and the respondent has produced judgment vide Exh. 8 given by the criminal court in criminal case No. 229 of 1982 acquitting the respondent workman for the offences charged against him. The respondent workman has further filed purshis vide Exh. 9 wherein it was stated that he is not challenging the legality and validity of the departmental inquiry. Before the labour court, no oral evidence was led by the either side. Thereafter, the labour court has considered the evidence led in the departmental inquiry and also considered the decision in the criminal case and reappreciated the evidence and came to the conclusion that the respondent was acquitted by the criminal court after considering the evidence led in the said criminal case and therefore, the departmental inquiry on the similar charge which was found to be proved cannot be considered to be just and proper and on that basis, the labour court held that the order of dismissal is liable to be quashed and set aside and thereafter, the labour court further concluded that in departmental inquiry, one reporter namely Mr. B.B.Raval was examined who was not an eye witness and except him, no other witnesses were examined in the departmental inquiry. Though the cyclist died in the said accident, said misconduct is required to be proved by legal evidence and, therefore, after considering these facts, the labour court in terms come to the conclusion that the charge levelled against the respondent in departmental inquiry was illegal and invalid and as a result thereof, the labour court directed reinstatement of the respondent with full back wages for the intervening period.

At the time of admission of this petition, ad interim stay of payment of back wages was granted by this Court. Therefore, the respondent workman must have been reinstated in service pending this petition.

Mr. Raval, the learned advocate appearing for

the petitioner corporation has contended that the view taken by the labour court is erroneous and the labour court has committed gross error in relying upon the decision of the criminal court and has also erred in holding that the misconduct is not found to be proved in the departmental inquiry while reappreciating the evidence and, therefore, the award passed by the labour court is required to be set aside.

I have considered the submissions made by the learned advocate for the petitioner corporation. After perusing the entire evidence produced before it, the labour court has passed reasoned order as to why he is coming to such a conclusion and has discussed the evidence led during the course of departmental inquiry. There is no dispute that the cyclist died in the said accident but at the same time, it must be proved that the said accident has occurred due to the rashness and/or carelessness on the part of the respondent workman. Such charge must be proved by leading evidence of an eye witness. In the instant case, the one who has reported about the incident is, admittedly, not an eye witness of the accident. The labour court has considered all these aspects and has come to the conclusion that the respondent was acquitted on merits in criminal case and has also discussed the evidence which was led in the criminal case. Similarly, in departmental inquiry also, the misconduct was not found to be proved since no eye witness was examined and only reporter was examined who was not an eye witness and, therefore, in such circumstances, the labour court found that the charge levelled against the respondent was not proved and as a result thereof, directed reinstatement of the respondent with full back wages as stated above.

Said question has been decided by this court in a decision reported in 1985 Lab. I.C. 1095 in which decision, this Court has held that the evidence of reporter in accident case who was not an eye witness have no assistance. This Court has examined in detail the case of driver of the Gujarat State Road Transport Corporation wherein the accident has taken place. This Court has clearly come to the conclusion that there is clear acquittal on merits after appreciation of evidence and examining the witnesses and, therefore, disciplinary proceedings could not have continued at all and, therefore, the labour court was justified in holding against the corporation. This Court has further held that even in the departmental inquiry, no eye witnesses are examined and it is surprising that without any evidence of negligence on the part of the delinquent, the

authority come to the conclusion of negligence and, therefore, the order of dismissal cannot sustain. In this case also, the labour court has taken the similar view after examining and considering the evidence which was led during the course of departmental inquiry. Recently, the Hon'ble apex court has also decided the similar situation in a decision reported in 1999 Lab. IC 1565. There also, criminal case as also the departmental proceedings were based on identical set of facts namely raid conducted at the residence of the appellant and the recovery of incriminating articles therefrom. There, the charge framed against the appellant was sought to be proved by the police officers and the punch witness who had raided the house of the appellant and had effected the recovery. They were the only witnesses examined by the inquiry officer and the inquiry officer, relying upon their statements, came to the conclusion that the charges were established against the appellant. Same witnesses were also examined in the criminal proceedings before the criminal court in the same subject matter. The criminal court, on consideration of the entire evidence, came to the conclusion that no search was conducted nor was any recovery made from the residence of the appellant. The whole of the case of the prosecution was thrown out and the appellant was acquitted of the charges levelled against him. In this situation, it has been held by the apex court in the said decision that it would be unjust, unfair and rather oppressive to allow the findings recorded at the departmental proceedings to stand. Since the facts and evidence in both the proceedings were same without there being any iota of difference, distinction which is usually being drawn as between the departmental proceedings and the criminal case. Ultimately, in the said decision, it has been held by the Hon'ble apex Court that the order of dismissal passed before the decision of the criminal case is liable to be set aside. After considering the aforesaid two decisions, in this case also, the respondent workman was acquitted in the criminal proceedings by the judgment dated 30.6.82 wherein the charge levelled against the respondent was that due to the rash and negligent driving, one cyclist died in the accident. The copy of the judgment given in the criminal case was produced by the workman before the authority in the departmental proceedings. However, the disciplinary authority has not considered the same and therefore, in view of the aforesaid two decisions, the view taken by the labour court is quite just and proper and based on the settled legal position and, therefore, according to my view, the labour court has not committed any error while passing the impugned award. No other circumstance has been pointed out. No other contention

has been raised by the learned advocate for the petitioner corporation. No infirmity has been pointed out in the impugned judgment of the labour court so as to warrant interference of this court in exercise of the powers under Article 226 and/or 227 of the Constitution of India. Therefore, the petition is liable to be dismissed.

Accordingly, this petition is dismissed. Rule is discharged. Interim relief granted earlier shall stand vacated. There shall be no order as to costs.

While admitting this petition, interim relief was granted by this court against the payment of back wages. Since the petition has now been rejected, in the larger interest of justice, I am directing the petitioner corporation to pay to the respondent workman the amount of back wages in terms of the impugned award passed by the labour court from the date of dismissal till the actual date of reinstatement within three months from the date of receipt of certified copy of this order.

Dt.8.10.1999. (H.K.Rathod,J.)

Vyas